

IN RE SPECIAL
INVESTIGATION NO. CID 18-
2673

IN THE CIRCUIT COURT
FOR BALTIMORE CITY

Case No. Misc. 1144

MEMORANDUM AND ORDER

The Petitioner, the State of Maryland, has filed a motion with this court seeking permission to disclose the contents of a report regarding allegations of sexual abuse in the Baltimore Archdiocese entitled “Clergy Abuse In Maryland” (“the Report.”) The request has been made under Md. Rule 4-642, governing the disclosure of grand jury material, because some portion of the material in the report was developed through the use of grand jury document subpoenas served on the Archdiocese of Baltimore.¹

Various parties have moved to intervene in this case, including the Archdiocese, a group of “interested parties” (consisting largely of individuals named in the report), a victim’s advocacy group (“Survivors Network of those Abused by Priests,” or “SNAP”), and several individual victims of clergy sexual abuse represented by, variously, the Maryland Crime Victims Resource Center (MCVRC) and private attorneys.

The parties present the court with a wide variety of issues ancillary to the core request to make the OAG Report public. Given the presumption of secrecy that cloaks grand jury proceedings and the potential dangers of publicizing the proceedings, the various requests and pleadings were placed under seal by the court until a hearing could be held on the requests.

On February 14, 2023, the court conducted its first hearing on the merits of the various motions. For the reasons stated below, the court will authorize the

¹ Formally, “The Roman Catholic Archbishop of Baltimore, A Corporation Sole.”

prompt release of a redacted version of the Report. The court will conduct a subsequent hearing to resolve outstanding issues, including the question of whether the redacted portions of the Report should be made public as well.

I. Background Information

After an investigation by the Pennsylvania Attorney General concluded that Cardinal William Keeler, the former Archbishop of Baltimore, engaged in the systematic cover-up of clergy sexual abuse within the archdiocese, the Maryland Office of the Attorney General (OAG) launched its own criminal investigation into allegations of sexual abuse by priests and others connected to the Archdiocese of Baltimore.

In 2019, the Office of the Attorney General requested that a grand jury issue a subpoena to the Archdiocese seeking all documents related to allegations of sexual abuse, and the Archdiocese's response to those allegations. According to the petitioner, this subpoena (and a second subpoena issued later in the investigation) ultimately led to the release of "hundreds of thousands of pages" of responsive documents, dating back to 1940. The final disclosure from the Archdiocese was made in July of 2022. The information gathered from those documents was combined with information gathered from investigators' interviews with victims, former archdiocese employees, priests, church officials, witnesses, and others to form the basis for the report, which, according to the petitioner, "identifies 115 priests that were prosecuted for sex abuse" and/or identified as "credibly accused" of sexual abuse. The report also "includes an additional 43 priests accused of sexual abuse but not identified publicly by the Archdiocese." (Pet. at 3). The Office of the Attorney General has informed the court that the only information in the report that was gathered as a result of grand jury subpoenas was the information obtained from the

documents provided by the Archdiocese. All other information in the report was acquired through other sources, including statements made to investigators.

In addition to the 158 priests, the Report names various individuals associated with the Archdiocese and various Catholic institutions who are not charged with abuse, but whose conduct could, at a minimum, raise questions about the institutional response to allegations of abuse over the past eight decades. One criminal indictment was filed as a result of the grand jury's investigation. (*State v. Adelberg*, Circuit Court for Baltimore County, Case No. C-03-CR-22-001178). The Office of the Attorney General has proffered to the court that no other criminal indictments or charges are being sought as a result of the investigation. The court accepts this proffer. It appears, and the court finds proven, that the grand jury's work in this matter has concluded and that at present, no additional indictments are being sought by the OAG or any other Maryland prosecutorial entity.

II. Issues Presently Before the Court

There are various issues presently pending before the court. One of the most complex and fundamental issues is which of the various parties may properly participate in this action, and in what role. The "Interested Parties," four victims, SNAP, and two individuals identified as "victim advocates" have asked to intervene in the action. Relatedly, the attorneys for the victims have moved to disqualify one of the attorneys for the "Interested Parties" and the Office of the Attorney General from participating in the proceedings, for different reasons. There is a request from the Archdiocese, joined by the "Interested Parties," that before any ruling, the individuals named in the report whose names have not already been published by the Archdiocese on its list of

“credibly accused abusers” (the “newly identified”) be notified and offered the opportunity to be heard before the court rules on the motion to publish the Report. This group of “newly identified” – the 43 priests and the others involved in these affairs over the past decades – numbers just over 200, although it appears a number of the individuals on that list are now deceased. And there is the ultimate issue before the court, which is whether the report containing presumptively secret grand jury material should be published. In addition, the attorneys for the victims have asked this court to refer “the matter” to a sitting grand jury for possible criminal indictments of both accused abusers and “those who obstructed justice.”

With regard to the motions to disqualify, the court will, with the consent of the parties, reserve any ruling until the affected parties are given the opportunity to respond. The requests to disqualify opposing counsel were not filed until shortly before the scheduled February 14, 2023, hearing. Also with the consent of the parties, the court has proceeded provisionally with the involvement of those challenged attorneys.

Similarly, the February 14, 2023, hearing proceeded with the participation of all the parties who had filed motions in the case, with the understanding that their status would be resolved after hearing argument. Regardless of the precise status of the various participants, all were afforded the opportunity to be heard at the February 14 proceeding.

A. The Status Of The Participants

The court has sufficient information to address the role of the current participants going forward. As noted, the court has exercised its discretion under Rule 4-642 to hear from those who have filed motions and been heard thus far. Captioned simply “Secrecy,” that Rule relates to the presumptive secrecy surrounding grand jury proceedings. Rule 4-642(d) addresses

disclosure, and provides that a party moving to disclose grand jury records or materials “shall serve a copy of the motion upon the State’s Attorney, the parties to the judicial proceeding if disclosure is sought in connection with such a proceeding, and such other persons as the court may direct.” Md. Rule 4-642(d) (2023). For the purposes of this proceeding, the Office of the Attorney General stands in the shoes of the Office of the State’s Attorney. However, since there has been no criminal indictment, it is unclear just who “the parties” would be in this case, other than the Office of the Attorney General. The court finds that none of the other participants constitute a “party” to the grand jury proceeding itself. All of the current participants nonetheless have been extended an opportunity to be notified and to be heard under the Rule.

While the law is somewhat ambiguous on this point, it appears to the court that this matter should be handled under criminal rules, not civil. Grand jury proceedings are criminal investigations, and the controlling Maryland rule is a part of the “Criminal Causes” title. See *In re Rep. of Grand Jury of Baltimore City*, 152 Md. 616 (1927) (petition to suppress grand jury report initiated in criminal court). With a few very narrow exceptions, there is no right of third-party intervention in a criminal proceeding. *News Am. Div., Hearst Corp. v. State*, 294 Md. 30, 45 (1982).

The grand jury’s investigation itself is not a criminal proceeding. A criminal “proceeding” does not begin unless and until an indictment issues. “[A] grand jury is an investigative and inquisitorial proceeding, not a criminal proceeding.” *In re Misc. 4281*, 231 Md. App. 214, 233 (2016). This is true notwithstanding the fact that (with a few statutory exceptions) the powers of a grand jury are limited to investigations of alleged crimes. *In re Special Investigation No. 236*, 295 Md. 75, 583 (1983).

In this case, the current “proceeding” is the State’s motion to disclose the Report created in part with information obtained from grand jury subpoenas, after the work of that grand jury had concluded. Nonetheless, the proceeding is fundamentally criminal in nature and the court will, to the extent practicable, apply the criminal rules and standards to its analysis of the issue of standing and third-party participation.

The Maryland Court of Appeals² has in the past addressed a question of standing relating to grand jury proceedings. Relying in large part on *Singleton v. Wulf*, 428 U.S. 106, 96 S.Ct. 2868 (1976), the Maryland Court determined in *In re Special Investigation Misc. 1064*, 478 Md. 528, 573 (2021), that the City of Baltimore, in its role as a provider of emergency medical services to overdose victims, had standing to challenge a grand jury subpoena seeking disclosure of certain medical records. *Singleton* identified two primary factors to be considered when one individual or entity seeks to assert statutory or constitutional rights enjoyed by a third party – first, “the relationship of the litigant to the person whose right he seeks to assert,” 428 U.S. at 114, and second, “the ability of the third party to assert his own right.” *Id.* at 115-16. In *Misc. 1064*, the Court of Appeals determined that within the context of the administration of emergency medical care, the City and its patients had a close relationship where the assertion of its patients’ right to privacy was “inextricably bound up with” the City’s role as medical provider. Moreover, the individually affected patients were essentially unable to assert their rights on their own, since they would have no way of knowing that the subpoena had even been requested. 478 Md. at 573.

² The former Court of Appeals of Maryland is now known as the Supreme Court of Maryland. The former Court of Special Appeals of Maryland is now known as the Appellate Court of Maryland. For the sake of consistency, the court shall refer to these courts by the names they used at the time they issued the relevant decisions under discussion.

However, in *Misc. 1064*, the proceeding at issue was the issuance of a subpoena by a sitting grand jury. The affected right – the patient’s right to privacy – was clearly identifiable by all sides. In the present case, by contrast, grand jury proceedings have concluded. While there are a number of factors involved in the overall protection of grand jury secrecy, it is more difficult to address precisely whose individual rights are threatened by the State’s motion to disclose when there is no ongoing investigation or prosecution, and therefore no clearly identified party aside from the State itself.

The Court of Special Appeals has refused to find standing for bank customers challenging a grand jury subpoena for bank records. *In re a Special Investigation No. 258*, 55 Md. App. 119, 121 (1983). That case, too, involved an ongoing investigation by a sitting grand jury. There, the court found that the customers of a bank subjected to a grand jury subpoena did not have standing to quash the subpoena, because they had no cognizable Fourth Amendment rights in the bank’s records and the statutory prohibition on the disclosure of bank records did not apply to criminal investigations.³ *Id.* at 128. Nor did they have standing to challenge either the propriety of the governor’s appointment of the Office of the Attorney General to conduct the investigation, or the propriety of a court ruling waiving the account-holders’ statutory right to notice of the subpoenas. *Id.* Unless and until an indictment was issued, the account holders simply had no authority to challenge the secret operation and procedures of the grand jury.

Here, not only is there no ongoing grand jury investigation, but the report at issue is not a report of the grand jury. It is a report by the Office of the Attorney General that relies, to some extent, on material obtained by two

³ Section 1-304 of the Financial Institutions Article states that a bank may not disclose a subpoena for records to an account holder if the subpoena includes a certification that service has been waived by the court for good cause.

grand jury subpoenas *duces tecum* served on the Archdiocese. And the action presently before the court is not a motion to quash those subpoenas, nor a motion to prevent the release of a grand jury report, but rather the OAG's motion to release its Report.

With that background by way of prelude, the court will address the status of the current participants.

Participant #1: The Office of the Attorney General

The OAG is the movant and represents the State of Maryland in this proceeding. The State is therefore the only participant that may be fairly described as a "party" to this action, and while the participation of the attorneys for the OAG has been challenged, it does not appear that any participant challenges the role or standing of the State of Maryland to bring its action to disclose the Report. The State is a party both by virtue of being the movant and by virtue of being the relevant prosecutorial authority, standing in the shoes of a State's Attorney under the authority granted to it by the Constitution and the 2015 letter of then-governor Larry Hogan.

Participant #2: The Archdiocese of Baltimore

The Archdiocese of Baltimore provided the documents to the grand jury which are now at issue. The Archdiocese, as an institution, was a grand jury "witness" in the sense that it received a grand jury subpoena and provided voluminous documents in response to that subpoena.

The Supreme Court of the United States has observed that one of the reasons for grand jury secrecy is to ensure the full and candid participation of witnesses:

[I]f preindictment proceedings were made public, many prospective witnesses would be hesitant to come forward voluntarily, knowing that those against whom they testify would be aware of that testimony. Moreover, witnesses who appeared before the grand jury would be less likely to testify fully and

frankly, as they would be open to retribution as well as to inducements.

Douglas Oil Co. of California v. Petrol Stops Nw., 441 U.S. 211, 219, 99 S. Ct. 1667, 1673, 60 L. Ed. 2d 156 (1979). However, the Maryland Court of Appeals has determined that once grand jury proceedings have concluded, witnesses have little standing to assert an interest in secrecy:

Nevertheless, there are instances when the reason for the rule may disappear, particularly where the jury has returned an indictment and the accused is apprehended. As stated in *American Jurisprudence*:

“The rule of secrecy concerning matters transpiring in the grand jury room, it has been said, is not designed for the protection of witnesses before the grand jury, but for that of the grand jurors, and in furtherance of the public justice. The witness has no privilege of having his testimony treated as a confidential communication, but must be considered as testifying under all the obligations of an oath in a judicial proceeding; hence his testimony may be disclosed wherever it becomes material to the administration of justice.” 38 Am.Jur.2d, Grand Jury, § 41 (1968).

Jones v. State, 297 Md. 7, 23 (1983) (citations omitted.) The court finds that the Archdiocese is a necessary participant in this proceeding because of its status as a witness, the language in *Jones* to the contrary notwithstanding.

Moreover, the Archdiocese is a necessary participant because it is in the best position to put any non-participants on notice of their mention in the Report. This is because the portions of the Report derived from grand jury subpoenas are already known to the Archdiocese; the records obtained by subpoena belonged to the Archdiocese. Disclosure of the Report to the Archdiocese would not violate any requirements for grand jury secrecy; while the Archdiocese may well have been unaware of much of the information in the Report (derived, as it was, from the efforts of multiple investigators and many

interviews of other witnesses and victims), it is presumably aware of the contents of its own records.

The court will therefore allow the continued participation of the Archdiocese pursuant to Md. Rule 4-642.

Participant #3: Teresa Lancaster, Jean Wehner, Michele Stanton, and Donna Vondenbosch.

Four individuals are identified as past victims of clerical sexual abuse at the hands of individuals presently named on the Archdiocese's "credibly accused" list. All assert that they were also the victims of unnamed others connected to the Archdiocese.

All four of these individuals assert a right to participate under Rule 1-326, and also have asserted the right to intervene under Md. Rule 2-214 (governing civil proceedings.) Rule 2-214 is a civil rule and does not apply in criminal proceedings. Rule 1-326 also does not appear to apply in this case.

Rule 1-326 states that "[a]n attorney may enter an appearance on behalf of a victim or a victim's representative in a proceeding under Title 4, Title 8, or Title 11 of these Rules for the purpose of representing the rights of the victim or victim's representative." A "victim" is defined as "a person who suffers direct or threatened physical, emotional, or financial harm as a direct result of a crime or delinquent act." Md. Code Ann., Crim. Proc. § 11-501 (West). While this is a proceeding under Title 4 of the Maryland Rules, it is unclear if the four victims constitute "victims" in this case. The four individuals are victims of crimes. But they are not the victims of crimes that were charged or indicted as a result of the grand jury investigation. It is by no means obvious that the term "victim" as used in Rule 1-326 refers to anyone who has been a victim of any uncharged crime related to a grand jury investigation, or if it is limited to victims of charged crimes.

Outside of Rule 1-326, the various provisions enacting the Victim Rights Amendment do not appear to apply in this case. Section 11-102 of the Criminal Procedure Article gives victims the right to appear in any proceeding where a defendant has a right to be present. Other provisions of Title 11 of the Criminal Procedure Article give victims the right to be notified after an indictment is unsealed, the right to be present at trial, the right to appear at sentencing, and the right to appear at all post-sentencing proceedings.

None of these provisions convey to victims the right to participate in a proceeding to release grand jury information. All of these provisions seem to accept as a given that a victim's right to participation is limited to participation by the victims of a particular charged defendant; the VRA was not intended to allow, for example, anyone who has ever been the victim of an assault to appear and speak at the sentencing of anyone who has ever been convicted of an assault. Thus, at least as far as the VRA is concerned, the term "victim" must be read to mean a victim of a charged crime in a given matter.

The court will assume, without deciding, that the broader language of Md. Rule 1-326 permits the entry of an attorney's appearance on behalf of victims in a proceeding such as this one when the victims assert that they were victims of the crimes being investigated, even if they were not the victims of the crimes being charged. Nonetheless, Rule 1-326 does not create a right to intervene or participate in the proceeding. On its face, an attorney who has entered her or his appearance under Rule 1-326 is entitled access to case records that are not sealed or shielded. Any other rights must be found in the relevant rules or statutes which, as discussed, do not appear to apply under these circumstances.

Article 47 of the Maryland Constitution states that "a victim of crime shall have the right to be informed of the rights established in this Article and, upon

request and if practicable, to be notified of, to attend, and to be heard at a criminal justice proceeding, as these rights are implemented and the terms 'crime', 'criminal justice proceeding', and 'victim' are specified by law." It does not appear that any current law has been adopted that applies to a "criminal justice proceeding" where there are no charges against a specific individual. The appellate courts have defined a "criminal proceeding" as beginning when charges are filed against an individual. *Robert B. v. State*, 193 Md. App. 620, 630 (2010). While one indictment did issue as a result of this investigation, this is not that case – and what's more, because the four individuals in this case were not the victims of the crime charged in that case, it seems unlikely that they would be entitled to Title 11 notifications and participation in that case.

The laws that have been adopted to enact the provisions of Article 47 appear to accept as a given that the rights guaranteed to crime victims apply to the victims of the crime that is the subject of the criminal proceeding. It cannot be the case that having once been the victim of a crime, a person gains the right to participate in any criminal proceeding against anyone, forever. Therefore, the fact that the four individuals seeking to participate in this matter are themselves victims of crimes does not grant them carte blanche to intervene in matters that are not direct criminal proceedings where they, specifically, have been identified as the victims of a charged individual.

The State proffers that there are over 600 victims identified in its investigation. It could not be the case that under Article 47 and Rule 1-326, 600 people are entitled to file pleadings and be heard in a proceeding where no defendant has been charged, tried, convicted, or sentenced. Moreover, victims are not monolithic in their positions and approaches to this matter. Some wish to remain anonymous. Some do not wish to participate in any prosecutions or

legal actions. The four victims who have participated thus far speak for themselves. They do not speak for all victims.

Nor do the victims have a right to intervene as third parties in a criminal matter outside of the enabling statutes of the Victims Rights Amendment. The right to intervene as a third party in criminal matters is otherwise limited to parties asserting a violation of their own First Amendments rights, as when a court issues a gag order or closes proceedings to the press. *News Am. Div., Hearst Corp. v. State*, 294 Md. 30, 45 (1982). There is absolutely no First Amendment right to publicize grand jury proceedings.

Therefore neither Title 11 of the Criminal Procedure Article or Article 47 of the Maryland Constitution give the victims the right to participate as parties in this case.

The victims' motions to intervene pursuant to Rule 2-214 are also denied. As noted before, this is a criminal proceeding, not a civil proceeding, and so the rules for civil intervention do not apply. Even if they did, the parties do not meet the criteria to intervene under Rule 2-214(a).

There are four criteria for intervention under Rule 2-214(a). The motion to intervene must be timely, the intervening party must have an interest in the proceeding, a resolution of the matter must impair the intervenor's interest in some meaningful way, and the intervenor's interest must differ in some way from that of the other participants.

Here, the motions to intervene were timely. Moreover, for the reasons put forth by the State in its Motion, and seconded by the victims in their pleadings, the victims have an interest in this action. Various factors make further prosecutions unlikely at best, and therefore a public airing of these matters is the victims' collective best hope for some form of justice. Moreover, as counsel for the victims argued at the February 14 hearing, the legislature is

contemplating matters that are directly responsive to the issue of abuse in the Archdiocese, and the victims have a personal interest in ensuring that the legislature has access to some form of this report before the legislative session ends.

But because they have the right to bring their own motion if dissatisfied with the results of the State's action, the resolution of this matter would not meaningfully impair the ability of future parties to bring their own motions to disclose. Therefore no ruling on the State's motion would prevent them, from a practical standpoint, from bringing their own action and raising whatever points, issues, or claims they feel were not addressed in the State's action. Moreover, the court finds that their interests are more than adequately covered by the State's pleadings and position in this case. The four victims want the same thing the State is requesting, and for the same reasons.⁴

Nor would the court grant permissive joinder under Rule 2-214(b), even if the civil rules applied. Adding parties and lawyers to the proceedings most assuredly delays the proceedings, and in this case, it would be to no benefit given that (as noted above) the interests of the victims and the interests of the State are, in this narrow context, identical.

The court is in no way minimizing or discounting the trauma of the victims of clerical sexual abuse, a trauma compounded by the actions of others in the Archdiocese and related institutions. But the court is also bound by the law, and the law makes no direct provision for the participation of victims in the State's motion to publicize a grand jury's findings, either as a matter of right or as a matter of law.

⁴ The only meaningful difference between the relief requested by the OAG and the relief requested by the victims is the victims' request that the court refer this Report to a new grand jury. For the reasons addressed below, that is beyond the scope of what is properly before this court.

However, the court will continue to allow the participation of the four enumerated victims under Rule 4-642. They may already be entitled to some access to the matter under Rule 1-326, given that their (unindicted) abusers are named in the Report. The court finds that at this stage of the proceedings, the interests of justice weigh more heavily in favor of allowing the continued participation of the victims than against it.

Participant #4: Gemma Hoskins, David Lorenz, and SNAP

Two individuals -- Gemma Hoskins and David Lorenz -- and the advocacy group SNAP have also moved to intervene in this case.⁵ The court will not allow their further direct participation in this matter. Ms. Hoskins and Mr. Lorenz do not have a right to appear under Rule 1-326 because they are not the victims of any crimes enumerated in the grand jury report. They have no particular interest in the publication of the Report that are not adequately covered by the other parties in this case. Nor does SNAP. The court finds that they have no standing to participate outside of the discretionary standards of Rule 4-642, and it is not in the interests of justice to allow for their continued participation under Rule 4-642.

Participant #5: The "Interested Parties"

The "interested parties" claim a right to participate under *In re Rep. of Grand Jury of Baltimore City*, 152 Md. 616 (1927). In that case, the appellants were the Mayor of Baltimore, the Baltimore City Public Improvement Commission, and individuals named in a grand jury report which did not charge anyone with any crime, but took the city and the various individuals to task for their conduct in the construction of Clifton Park High School. The

⁵ It is unclear from the pleadings whether the attorneys for Wehner and Lancaster were also seeking to have the Maryland Crime Victims Resource Center accepted as a party in this matter. If that was being requested, it is denied for the same reasons that the court is disallowing SNAP as a participant.

named individuals then filed petitions in the Baltimore City Criminal Court to prevent the release of the report.

The standing of these individuals was not addressed in the opinion of the Court of Appeals. The opinion was issued before the current Rule 4-642 existed in any form. Its holding was that Maryland would no longer distinguish between a grand jury "presentment" – criticizing some form of wrongdoing without bringing any criminal charges – and a grand jury indictment, formally charging someone with a crime. All grand juries were empowered to legitimately do, according to the decision, was charge people with crimes. Because grand jury proceedings were secret, the Court reasoned, a person charged with a crime would have an opportunity to respond in court, while a person subjected to criticism without any criminal charge would be unable to respond.

The report in the present case does not charge any violation of law, but is a censure of the conduct of persons engaged in the public business, impugning their integrity and fairness and pointing them out as public servants whose official acts should merit condemnation at the hands of the people. The function of the grand jury is to investigate violations of the criminal law, and in performing this function their inquisitorial powers are unlimited. If, however, having exercised these powers in any given case, there is lacking sufficient evidence to indict, their duty in that particular case ceases, and, under their oath, nothing transpiring within their body should be made public. It is apparent that this should be so, for the protection of the good name and reputation of the people, otherwise a condition would exist which the establishment and zealous maintenance of the grand jury was intended to prevent; namely, that of having an individual publicly charged with misconduct without probable cause. If there is sufficient evidence of the commission of a crime, it is the duty of the grand jury to indict, that is, to take such action as will bring the party to trial; if there is not, the citizens are and should go protected against accusations by that body which do not mount up to a criminal offense.

. . . The report here under consideration exceeds the legitimate powers of the grand jury and is calculated to injure the reputation of the individuals named or inferentially included therein. It charges the commission of no crime, and its only effect can be to arraign certain public officials as having been guilty of real or fancied misconduct in the administration of their public duties.

152 Md. 616 at 631-32. There are obvious differences between the grand jury report of 1927 and the OAG report of 2023, and there is nearly a century of subsequent case law regarding the disclosure of grand jury proceedings under certain circumstances, but had the courts not tacitly accepted the standing of the uncharged aggrieved parties in that case, there would have been no way for the challenge to even reach a court to be decided.

The “interested parties” also point to *In re Rep. of Grand Jury of Carroll Cnty., Nov. Term, 1976*, 39 Md. App. 472, 475 (1978), which the Court of Special Appeals described as “strikingly similar” to *In re Rep. of Grand Jury of Baltimore City*. An earlier Carroll County grand jury had indicted several school system employees; the November Term grand jury issued a report directly criticizing an assistant school superintendent, “Dr. Forno,” for misconduct, without charging him with any crime. Dr. Forno filed a petition in the circuit court for Carroll County, seeking to have his name redacted from the petition. Recognizing that *In re Rep. of Grand Jury of Baltimore City* had been heavily criticized in the half-century since that decision issued, the Court of Special Appeals nonetheless considered itself bound by the 1927 case and ruled that the grand jury’s report was improper.

As in the 1927 case, the courts seemed to accept without question Dr. Forno’s standing to bring the action in the Carroll County case. And given the nature of the claimed injury and the remedy sought, there would seem to have

been no other option; only Dr. Forno had standing to complain about a grand jury report accusing him of wrongdoing without charging him with a crime.

The posture of the “interested parties” in this case is similar to that of the petitioners in *In re Rep. of Grand Jury of Baltimore City* and *In re Rep. of Grand Jury of Carroll Cnty.*, Nov. Term, 1976. To be sure, there are some important substantive differences between those cases and the present case, but the court will follow the precedent set by those two cases and allow the “interested parties” to continue to participate in this case. The right to prevent the release of a grand jury report and the right to oppose the release of grand jury information in an OAG report are similar enough that the “interested parties” are entitled to be heard in this matter. Absent any specific authority by rule or statute allowing for their intervention, the court will allow their continued participation under Rule 4-642.

B. The Request To Refer The Matter To A New Grand Jury

The attorneys for the victims have asked the court to refer “the matter” to a grand jury. This court declines to do so for multiple reasons, the first and foremost of which is that this proceeding addresses the OAG’s motion to disclose the Report. It is not a grab-bag proceeding for any and all wishes or requests related to allegations of sexual abuse and/or cover-up by employees of the Archdiocese. The court’s inquiry is limited to whether the Report should be disclosed, and if so, under what conditions. The request for a referral to a new grand jury is outside the scope of these proceedings. Any request for additional criminal investigations should be made separately.

Moreover, it is unclear to the court just what “matter” the victims want referred. A grand jury has already employed its powers of investigation and inquiry, with the guidance of the OAG, toward examining allegations of abuse in the Archdiocese. An indictment of an accused individual was obtained. If by

“the matter” the attorneys mean the results of the investigation – which, based on the arguments presented by the attorneys, is indeed what was meant – the court is unaware of any authority which would empower the court to refer the same matter to different grand juries in search of a different result.

“In addition to any other duty imposed by law, each grand jury shall carry out an investigation if a judge of the circuit court directs.” Md. Code Ann., Cts. & Jud. Proc. § 8-417 (West). This authority is limited to Baltimore City circuit court judges. This is discretionary, and there is no individual right to compel a judge to present an issue to a grand jury. *Holloman v. Mosby*, 253 Md. App.1, 16 (2022).

However, in this case, a grand jury has already conducted an investigation. One indictment arose from the investigation. Even if the request to direct a new investigation were properly before this court, the parties would have to demonstrate why it would not be an abuse of discretion for a judge to order a succession of grand juries to investigate the same matters in hope of a different response.⁶

Lastly, while those appearing before the court are certainly free to argue alternative legal theories, the suggestion that there could or should be a new grand jury investigation into the matters set forth in the Report runs contrary to the reasons set forth by the State and the victims for the disclosure of the Report. As discussed below, a significant factor in the court’s analysis of whether the rule of secrecy should be lifted in any grand jury proceeding is

⁶ *Holloman* reiterates that individuals must exhaust their pursuit of other remedies before they may assert a common-law right to present material to a grand jury. 253 Md. App. At 22. In this case, the matter was presented to the grand jury by the relevant prosecutorial authority, which would appear to preclude any further assertion of an individualized right to present to the grand jury. *Id.* See also *Sibley v. Doe*, 227 Md. App. 645, 655 (2016) (no further right to present to grand jury once the State’s Attorney presented, at petitioner’s request, the petitioner’s materials to the grand jury, which declined to indict.) The requirement of exhaustion (and the prosecutor’s discretionary authority) would be meaningless if the petitioner was able to insist on repeated presentations to a grand jury after the matter was already presented to a grand jury by a prosecutor.

whether the grand jury's investigation has concluded. The parties favoring disclosure assure the court that there are no current or anticipated future grand jury proceedings – except that the victims then ask the court to order new grand jury proceedings on the same matters. This is not the presentation of alternative legal theories; this is asking for two mutually exclusive types of relief based on two mutually exclusive factual assertions.

The request to refer any part of these matters to a new grand jury is denied without prejudice at this time. It is beyond the scope of this action.

C. The Request To Notify Other Parties

The Interested Parties – who, their lawyers assert, include 16 individuals named in the report but are neither indicted nor on the Archdiocese's list of "credibly accused" abusers – ask that this court notify the roughly 200 other individuals named in the report who fit the similar description of neither indicted nor previously identified as "credibly accused." They point to *In re Rep. of Grand Jury of Baltimore City*, 152 Md. 616 (1927), and *In re Rep. of Grand Jury of Carroll Cnty., Nov. Term, 1976*, 39 Md. App. 472 (1978), two cases (discussed above) where courts intervened at the request of similarly situated interested parties to prevent the release of grand jury reports that put uncharged targets in a bad light.

The State suggests that not all of these individuals need to be put on direct notice; some, they note, are deceased, and some are named in an entirely neutral context, such as the authors of newspaper articles. Others have already been exposed as accused abusers, either in litigation or through the Archdiocese's "credibly accused" list. For their part, the victims argue that the publicity that briefly attended the OAG's announcement that the report was complete was sufficient to put any interested parties on notice that they should seek to intervene. The court rejects the suggestion that the publicity

surrounding the existence of the Report and the OAG's request to publish it suffice to put the affected individuals on constructive notice.

An accusation is not proof of wrongdoing, and as discussed in *In re Rep. of Grand Jury of Baltimore City*, a person on the receiving end of a grand jury's condemnation that does not result in charges is in some ways in a worse position than a person actually indicted; at least a person charged with a crime will receive his or her day in court to demonstrate his or her innocence. The people who are cast in a critical light in the OAG Report may well deserve the criticism, but they are also entitled to at least an opportunity to seek the same relief offered in *In re Rep. of Grand Jury of Baltimore City* and *In re Rep. of Grand Jury of Carroll Cnty., Nov. Term, 1976*. In the latter case, it should be noted, the identity of Dr. Forno was released to the media before the appellate court ruled that he was entitled to the relief he sought (the partial redaction of the report), leading the Court of Special Appeals to note that his success on appeal was a "hollow victory."

To be sure, this case differs in several key respects from *In re Rep. of Grand Jury of Baltimore City* and *In re Rep. of Grand Jury of Carroll Cnty., Nov. Term, 1976*. First and foremost, this is not a grand jury report. It is a report based in large part on the work of OAG investigators, that happens to include information gathered from Archdiocese records that were obtained through a grand jury subpoena. See *In re a Special Investigation No. 258*, 55 Md. App. 119, 121 (1983) (the Attorney General's reliance on grand jury subpoenas to undertake an investigation "is obliged by the Legislature's having declined to provide the Attorney General with any comparable criminal subpoena power.")

Second, this matter is proceeding under the authority afforded to the court by Rule 4-642, which allows the disclosure of grand jury materials upon the consideration of various factors. The risk of opprobrium attaching to named,

unindicted individuals is a factor to be considered, but it is not the only factor to be considered when contemplating the release of material under that Rule.

Following the example of *In re Rep. of Grand Jury of Baltimore City* and *In re Rep. of Grand Jury of Carroll Cnty., Nov. Term, 1976*, the court agrees that there should be an attempt at notifying some portion of these named individuals. Specifically, individuals must be put on notice if they are:

(a) accused in the Report of abuse, covering up abuse, silencing victims, participating in efforts at either transferring accused abusers to different positions or accepting them into the Archdiocese, and/or assisting in any of these acts either before or after the fact;

(b) not previously publicly identified through civil or criminal litigation, any prior public reports regarding clerical abuse within the Archdiocese of Baltimore, or the public statements and reports of the Archdiocese itself (including the list of credibly accused abusers noted in the pleadings);

(c) were identified in the investigation solely as a result of the disclosures made by the Archdiocese in response to the grand jury subpoena; and

(d) presently alive.

The OAG has identified approximately 208 individuals who meet some of these criteria. However, that list appears to include individuals who were identified through sources other than the grand jury subpoena. Information not obtained through grand jury subpoena is not subject to the presumption of secrecy that envelops grand jury proceedings. The Archdiocese appears to be in the best position to assist the OAG in notifying those individuals who meet the court's criteria, since the vast majority of them worked for the Archdiocese or an affiliated institution.

By way of today's order, the court is directing that the OAG present a list of affected individuals meeting these criteria to the Archdiocese for prompt

review. After such review, the Archdiocese shall present the court with the names of any additional individuals that it feels should be placed on the notification list (or those whom it feels should not be on the notification list), along with a brief explanation for its position. The Archdiocese and the OAG will have fifteen (15) days from the date of this order to present to this court a list of affected people, including any names about which the State and Archdiocese disagree.

After the court approves a final list, the Archdiocese will provide the State with any contact information in its possession regarding these individuals. The OAG will then undertake a good-faith effort to notify these individuals of this proceeding by paper mail, electronic mail, or other method approved by the court. The court will supply the OAG with the proper language for that notice. The notified parties will be given a period of fifteen (15) days to respond to the court if they wish to be heard on the motion to disclose an unredacted version of the report. If they do, they will have the opportunity to review, *in camera*, that portion of the report which identifies them. At a subsequent hearing, the court will entertain arguments from all such notified parties who oppose an unredacted release of the report before deciding if an unredacted version of the Report should be released.

D. The Release Of The Report

“Secrecy is the lifeblood of the grand jury.” *In re Crim. Investigation No. 437 in Cir. Ct. for Baltimore City*, 316 Md. 66, 76 (1989). There are manifold reasons for the general presumption of grand jury secrecy, but Supreme Court of the United States and Maryland’s appellate courts have identified the need to protect the uncharged targets of investigations from unfair obloquy, the need to ensure the freedom and independence of the grand jurors, and the need to

ensure candid and compliant witnesses as among the chief reasons for mandating a general rule of secrecy.

In particular, we have noted several distinct interests served by safeguarding the confidentiality of grand jury proceedings. First, if preindictment proceedings were made public, many prospective witnesses would be hesitant to come forward voluntarily, knowing that those against whom they testify would be aware of that testimony. Moreover, witnesses who appeared before the grand jury would be less likely to testify fully and frankly, as they would be open to retribution as well as to inducements. There also would be the risk that those about to be indicted would flee, or would try to influence individual grand jurors to vote against indictment. Finally, by preserving the secrecy of the proceedings, we assure that persons who are accused but exonerated by the grand jury will not be held up to public ridicule.

Douglas Oil Co. of California v. Petrol Stops Nw., 441 U.S. 211, 218–19, 99 S. Ct. 1667, 1672–73, 60 L. Ed. 2d 156 (1979). This passage was approvingly quoted (verbatim) by the Maryland Court of Appeals in *Investigation No. 437*, 316 Md. at 77. “The secrecy rule . . . simultaneously protects: the investigation’s integrity, the grand jurors themselves, hesitant witnesses who would be less likely to testify fully and frankly, as well as individuals whose conduct may be investigated, but against whom no indictment may be found.” *In re Misc. 4281*, 231 Md. App. 214, 230 (2016) (*mut. mut.*) Ninety years ago, the Court of Appeals discussed the benefits of secrecy at some length:

“[I]t is an inflexible requirement that [grand jury] investigations shall be carried on secretly and free from outside interference or influence; and great care is taken that they shall be so carried on. The purposes of this are many. Freedom of inquiry is to be preserved, and at the same time individuals whose conduct may be investigated, but against whom no indictment may be found, are to be protected from disrepute, and all individuals are to be protected from one-sided presentations of unfavorable evidence, without opportunity to reply, before any one present unnecessarily. This protection from one-sided hearings has, indeed, been regarded as demanded in constitutional provisions for

inauguration of criminal proceedings by indictment. It is, moreover, inherent in the grand jury system with all the force of a statutory enactment. And it is found embodied in the familiar grand jury oath that the members sworn shall keep secret the counsel of the state, their fellows, and their own, and shall not present any one for envy, hatred, or malice, nor leave anyone unrepresented for fear, favor, or affection, or hope of reward. The rule is not merely a remedial one, that injury shown to have been sustained by the accused in a particular case shall be remedied, but also a preventive one, which interposes in advance for private benefit and public benefit as well. Discriminations between degrees of departure from it are difficult to manage, and, unless the bar is maintained in all cases, it can hardly have any effective existence.

Coblentz v. State, 164 Md. 558 (1933) (*mut. mut.*)

However, grand jury secrecy has never been absolute, and at both the federal and state level, there is a body of law surrounding the circumstances under which grand jury proceedings may, in whole or in part, be released to the public.

The rule of secrecy surrounding grand jury proceedings is a product of the common law and 'is designed to protect the jury from outside interference or pressure.' Nevertheless, there are instances when the reason for the rule may disappear, particularly where the jury has returned an indictment and the accused is apprehended.

Jones v. State, 297 Md. at 23 (citations omitted.)

Maryland Rule 4-642 presently authorizes the disclosure of grand jury materials. In *Investigation No. 437*, the Court of Appeals provided a roadmap for the application of the rule, first noting that both the Maryland rule and its federal counterpart

are cut from the same cloth. They are both founded on the tenet that secrecy is inherent in the function of the grand jury. They both recognize that unwarranted intrusion on that secrecy is not to be tolerated. They both insist that generally the secrecy as to records and hearings related to matters occurring before the grand jury must be preserved. They both suggest that in the absence of a clear

indication in statute or rule, the courts must always be reluctant to conclude that a breach of this secrecy has been authorized. They both evidence an awareness, however, that the veil of secrecy with which the grand jury is cloaked must be lifted at times in the interest of justice. But this may be done only discretely and limitedly. In the absence of law permitting disclosure of matters occurring before the grand jury without court authorization, a court order is a condition precedent to disclosure. Neither rule, however, offers or suggests a standard under which the order shall be issued.

316 Md. at 81 (*mut. mut.*) After reviewing various U.S. Supreme Court rulings on the matter, the *Investigation No. 437* Court observed that there were several factors to be balanced when considering a motion to disclose.

Before disclosure is ordered, "there must be a strong showing of a 'particularized need' before disclosure is permitted." *Id.* at 82. To show a particularized need, the parties seeking disclosure must show

"1) the material they seek is needed to avoid a possible injustice; and

"2) the need for disclosure is greater than the need for continued secrecy; and

"3) their request is structured to cover only material so needed."

Id. at 85. This standard is a slightly modified version of the standard established by the Supreme Court of the United States in *Douglas Oil, supra*. The court's consideration and weighing of the factors is reserved to the court's discretion. *Id.* at 89.

The court has considered the factors listed in *Investigation No. 437*. The court has determined that the State and the victims have shown a particularized need to disclose at least some portions of the Report.

The hundreds of victims of clerical abuse over the years have suffered from decades of systemic injustice. As the State has argued in its pleadings, the passage of time, the changes in criminal laws over the years, and the concerted efforts of various individuals within the Archdiocese have effectively

ensured that the perpetrators of abuse identified in the Report will escape any form of formal criminal sanction. The same can be said for the individuals who went to sometimes extraordinary lengths to protect abusers, bury accusations, and essentially enable the rape and torture of children and young adults for many years. All of this constitutes an injustice. The only form of justice that may now be available is a public reckoning – a disclosure of the facts as found by the OAG and contained in its report. Even that limited form of justice is thwarted by forbidding publication of the report for the simple reason that the Office of the Attorney General does not have its own criminal subpoena powers and is compelled to rely on the grand jury for something as simple as a request for documents. Keeping this Report from the public is an injustice.

Moreover, the Maryland General Assembly is meeting now and is considering changes to state laws that might open the door to some belated paths to civil or criminal litigation surrounding the events documented in the Report. Any further delay in its release would prevent the General Assembly from considering this 469-page trove of information about this topic.

The need for disclosure outweighs the need for secrecy. As discussed above, much of the material in this Report is not secret anyhow. It was gathered by OAG investigators in the form of witness and victim interviews, combing public records, and in all of the other investigative techniques that did not require a grand jury subpoena. To the extent that the Report relied upon the Archdiocese's documents as the primary source for accurate, if unflattering, accounts of actions taken by various individuals, however, the court is persuaded that continued delay and secrecy are far more damaging to the cause of justice than what might be suffered by these individuals in feeling compelled to publicly justify their behavior. The grand jury has finished its work, which greatly reduces the need for secrecy, and as no new indictments

have been issued, there is no risk of an accused individual fleeing justice, or an affected witness being subject to pressure.

The court is acutely aware that an accusation is not the same as guilt. Moreover, it is the case that at least some of the individuals who will be cast in a poor light by this Report were not afforded the opportunity to present their versions of events to the investigators. That is one of the reasons why the court is offering such individuals the right to be notified and to be heard by the court before their identities are disclosed. But the mere fact that it might make some of them look bad is not, in and of itself, sufficient to outweigh the particularized need for disclosure presented to this court. Sometimes it is proper that people face public opprobrium for their actions, especially when those same actions ensured that it would be impossible to properly test the claims of their accusers in a court of law.

The disclosure, however, should respect the fact that the court has afforded these individuals the right to be heard before any final decision is made about publishing an unredacted version of the report. There is a presumption of secrecy, not a presumption of disclosure, and while the movant has rebutted that presumption with regard to some portions of the report, it still remains to be seen whether the balance of the report should remain out of the public view or not.

Thus, the court's order for release is, at present, structured to limit the scope of publication while at the same time addressing the need for some timely and prompt disclosure.

As noted above, the court has identified several broad categories of individuals who are entitled to notice and an opportunity to be heard. Essentially, these are people who are accused of abuse, hiding abuse, enabling abuse, assisting in the cover-up of abuse, or protecting abusers from the

consequences of their action, AND whose identities were revealed solely or primarily as a result of the grand jury subpoenas. The court is today ordering the publication of the Report with the identities of those individuals redacted. After confirming the scope of the list of affected individuals with the Archdiocese (and this court) as described above, the OAG is authorized to publish its Report, with the names of those identified parties redacted and contextual information (such as job titles) that would identify the individual either redacted or modified to a more general form. The court must review the proposed redactions before the Report may be released.

The victims in this case have argued that there should be prompt and complete disclosure of the entire Report because, they aver, the OAG has eliminated any possible claim to secrecy by sharing the report with the Archdiocese, which in turn shared some portions of the report (with the knowledge of the OAG) with the attorneys for the interested parties, presumably to put them on notice that their clients were named in the report.

The court does not accept this argument. The only portions of the Report that constitute presumptively secret grand jury materials are those portions which were obtained exclusively from the Archdiocese's subpoenaed records. The Archdiocese already knew the contents of its own records. Therefore, the disclosure of the Report to the Archdiocese did not disclose any secrets to the Archdiocese that it was not already aware of.

Moreover, notifying the attorneys for the Interested Parties that their clients were named in the Report is consistent with the court's order above, directing that similarly situated people also be notified of their possible exposure in the report. While the court finds that a continued cloak of secrecy is unjust and must yield to the particularized need for prompt disclosure of some parts of the Report, the identified individuals are still entitled to be heard

and their arguments (if any) in favor of continued secrecy considered when the court weighs whether, under Rule 4-642, a more complete version of the Report should be released at a later date.

III. Conclusions of the Court

For the reasons stated above:

- (1) The OAG will prepare a list of affected individuals in accordance with the definitions set forth by the court in this Memorandum and Order. That list is to be presented to this court on or before March 13, 2023.
- (2) A redacted version of the Report may be released as soon as this court has confirmed the proposed list of affected individuals.
- (3) The OAG will undertake a good-faith effort to notify the individuals on this list.
- (4) The court will make available for *in camera* review those portions of the report that relate to any responding affected individual. Upon the completion of that process, the court will hold a subsequent hearing on whether some or all of the prior redactions should be removed and a full version of the Report released.
- (5) The court will determine if another hearing is necessary to address the victims' motions to disqualify various attorneys after the affected attorneys have responded. If no further hearings are necessary on that issue, the court will address those motions in a supplemental order.
- (6) Until the court holds the subsequent hearing on whether a more complete version of the report should be released, the pleadings and record in this case remain under seal, as some of those documents identify some of the affected individuals.

2/24/2023

Date

Judge Taylor's signature appears
on the original of this document.

Robert Taylor, Jr.

Associate Judge

Circuit Court for Baltimore City

IN RE SPECIAL
INVESTIGATION NO. CID 18-
2673

IN THE CIRCUIT COURT
FOR BALTIMORE CITY

Case No. Misc. 1144

ORDER

For the reasons stated in the court's memorandum opinion, it is this 24th day of February, 2023, hereby ORDERED that:

The State's motion to release the Report is GRANTED in part. A redacted version of the report may be released on an interim basis after the court has approved the redactions as described in the court's memorandum.

2-24-2023
Date

Judge Taylor's signature appears
on the original of this document.

Robert Taylor/Jr.
Associate Judge
Circuit Court for Baltimore City